STATE OF MICHIGAN

COURT OF APPEALS

WHITEFORD PARTNERS, LLC, FRANKLIN GROUP, INC., GEORGE M. VERGOTE, and MICHELLE L. VERGOTE,

Plaintiffs-Appellants,

v

WHITEFORD TOWNSHIP,

Defendant-Appellee.

UNPUBLISHED
June 17, 2003

No. 238719
Monroe Circuit Court
LC No. 99-009840-CH

Before: Fitzgerald, P.J., and Hoekstra and O'Connell, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court order concluding that defendant did not deny plaintiffs' constitutional rights when the township board refused to rezone plaintiffs' property from AG-2, reserve agricultural district, to R-MHP, a classification that would permit a manufactured housing park. Plaintiffs had filed a complaint alleging, among other claims, unlawful exclusionary zoning practices that denied them equal protection and substantive due process, and bad faith administrative zoning practices denying plaintiffs substantive and procedural due process. We affirm in part, reverse in part, and remand for further factual findings.

Plaintiffs first contend that the trial court erred when it failed to make specific findings of fact and conclusions of law that the township zoning ordinance impermissibly excludes manufactured housing communities in violation of MCL 125.297a. We agree. Under MCL 125.297a, a zoning ordinance may not totally exclude a lawful land use where (1) there is a demonstrated need for the land use in the township or surrounding area, and (2) the use is appropriate for the location. *Frericks v Highland Twp*, 228 Mich App 575, 610; 579 NW2d 441 (1998), citing *English v Augusta Twp*, 204 Mich App 33, 37-38; 514 NW2d 172 (1994).

As a preliminary matter, the trial court should have determined whether the township zoning ordinance totally excluded lawful land use. Such a finding is necessary to resolve the question whether defendant Whiteford Township engaged in unconstitutional and unlawful exclusionary zoning practices. To establish a claim of exclusionary zoning under MCL 125.297a, the land use sought cannot occur within the township's boundaries or within close geographical proximity. *Guy v Brandon Twp*, 181 Mich App 775, 785; 450 NW2d 279 (1989).

In addition, we recognize a claim of total exclusion when an area is rezoned to allow for the prohibited land use if, in rezoning the area, the zoning board knows the area will never be developed. *English*, *supra* at 37-38.

Although the trial court found that no mobile home parks exist within the township, the trial court never addressed the factual issue whether the zoning ordinance totally excluded the use of land for a mobile home park. In its November 15, 2001, opinion, the trial court did find that the master plan does not exclude manufactured housing, but it never resolved the issue whether the zoning ordinance or the decision to deny the rezoning request totally excluded the use of land for a mobile home park. Because MCL 125.297a states that a zoning ordinance or zoning decision "shall not have the effect of totally prohibiting" a land use, it was incumbent on the trial court to first determine whether the zoning ordinance or the denial of the rezoning request totally excludes the use of land for a manufactured housing park. Such a finding is essential in determining whether plaintiffs' exclusionary zoning claim has merit.

In a bench trial, a trial court must make specific findings of fact, separately state its conclusions of law, and direct entry of the appropriate judgment. MCR 2.517(A)(1); *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995). Findings of fact are sufficient regarding contested matters in a bench trial if the findings are "[b]rief, definite, and pertinent," if it appears that the trial court was aware of the issues in the case and correctly applied the law, and where appellate review would not be facilitated by requiring further explanation. MCR 2.517(A)(2); *Triple E*, *supra* at 176. Brevity in the articulation of factual findings is not fatal, as long as the appellate body is not forced to draw so many inferences that its review becomes merely speculative. *Powell v Collias*, 59 Mich App 709, 714; 229 NW2d 897 (1975). Because there was no factual determination of the aforementioned issue, we remand this case to the trial court for a determination whether the zoning ordinance totally excluded mobile home parks. *FDIC v Garbutt*, 142 Mich App 462, 470; 370 NW2d 387 (1985).

Furthermore, if, on remand, the trial court determines that the zoning ordinance did totally exclude manufactured housing parks in the township, then it should also state its findings regarding whether plaintiffs established a need for a manufactured housing community within the township or surrounding areas, and whether this use is appropriate for the location pursuant to the two-part test in *English*, *supra* at 37-38.

Plaintiffs also argue that defendant's refusal to rezone plaintiffs George M. and Michelle L. Vergote's property denied plaintiffs their substantive due process rights under the Michigan Constitution. Reviewing de novo a substantive due process challenge to a zoning ordinance, *Bell River Assoc v China Twp*, 223 Mich App 124, 129; 565 NW2d 695 (1997), we disagree.

In order to prevail on a substantive due process challenge to a zoning ordinance, a plaintiff must establish either "(1) that there is no reasonable governmental interest being advanced by the present zoning classification or (2) that an ordinance is unreasonable because of the purely arbitrary, capricious, and unfounded exclusion of other types of legitimate land use from the area in question." *Frericks*, *supra* at 594.

At trial, Leroy Bunge, a voting member of the township board and planning commission as well as township clerk, testified that the board relied on the township planning commission's

findings and considered the county planning commission's findings when it denied the rezoning request. On January 25, 1999, the Whiteford Township Planning Commission recommended that the board deny the rezoning request based on the following reasons:

> (1) the Vergote property is "good farmland,"
>
> (2) the Master Plan designates a 7% ratio for mobile home units, and
>
> (3) no need has been expressed for the more than 300 proposed homes in the township.

In its February 8, 1999, township zoning review, the Monroe County Planning Commission also recommended that the board deny the rezoning request, stating the following reasons:

> (1) the request was incompatible with County Future Land Use Plan,
>
> (2) the request was incompatible with the Whiteford Township Master Plan because other areas were proposed in the plan for residential development of this density,
>
> (3) a reasonable doubt exists as to whether wastewater and potable water supplies necessary to support a land use of this type and density should be allowed in regard to the nature of the glacial geology, soils, and hydrological factors of this area,
>
> (4) the lack of public utilities (sewer and water), and
>
> (5) a reasonable doubt exists as to whether the school district could accommodate the increased student population that would result from granting the request.

Relevant considerations in determining the reasonableness of a particular exclusion include the use of surrounding areas, traffic patterns, and available water supply and sewage disposal systems. *Johnson v Lyon Twp*, 45 Mich App 491, 494; 206 NW2d 761 (1973). Further, "[t]he fact that other sites are better suited, in light of those considerations for the proposed use and are predesignated for the proposed use, pursuant to a master plan adopted in compliance with statutory requirements, may also be evidence of reasonableness." *Id*.

Plaintiffs have failed to establish that no reasonable governmental interests exist in denying their rezoning request. The lack of public utilities on the property and the concerns raised about the potential for contamination as a result of an on-site sewer system are reasonable governmental interests. The trial court found from the evidence presented at trial that the Vergote property lacks public water and sewer. In contrast, evidence was presented to the court that the recently rezoned Parkmoor property does have access to an existing water and sewer system.

Further, because the proposed development would have to rely on private wastewater treatment and a community well and because the Vergote property is near a recharge area, the

Monroe County Planning Commission raised concerns about possible flooding and contamination of the groundwater and the surface water. A letter from county sanitarian Amy Hartson to county planner Frank Nagy stated her concerns about the potential flooding of Halfway Creek, one of three major drains for the township that runs through the Vergote property, as well as her concerns about the recharge of the groundwater within the township. In particular, Hartson was concerned that any development on the permeable soil of the Vergote property might "inhibit the rate of infiltration" to the aquifer. In addition, Hartson noted that there was historical data that referenced an illegal-dumping site located near the Vergote property.

In its November 15, 2001, opinion, the trial court found that the deposition testimony and Hartson's letter raised serious concerns about the development of a manufactured housing park on the Vergote property. The court highlighted Hartson's deposition testimony where Hartson discusses the high porosity of the area, which would allow pure and impure water to enter very quickly into the subsoil and water table. The court also referenced parts of Hartson's deposition where she refers to a sinkhole area in the township and concludes that liquids could rapidly enter through the sinkhole. The trial court found that plaintiffs failed to address the environmental concerns stemming from the high porosity of the soil on the Vergote property and the installation of a treatment system there. Likewise, the court determined that plaintiffs failed to address the possible unlawful landfill in the area.

According the trial court's findings considerable weight, *A & B Enterprises v Madison Twp*, 197 Mich App 160, 162; 494 NW2d 761 (1992), and noting that the township can consider such factors as the availability of water supply and the impact of sewer treatment systems in the area, *Johnson*, *supra*, we conclude that plaintiffs failed to establish that the zoning decision advanced no reasonable governmental interest.

We further conclude that preservation of farmland is another reasonable governmental interest. One goal of the township master plan was to preserve the agricultural land in the township. The Vergote property was zoned for agricultural use and was used as a farm at the time of trial. In addition, the areas surrounding the Vergote property are currently being farmed. In contrast to the Vergote property, the recently rezoned Parkmoor property was not being farmed and was located in an area designated as high density.

This Court has also held that a township board can take into consideration the master plan as a guide when denying a rezoning request. *Bell River*, *supra* at 131. In the present case, the township board denied plaintiffs' rezoning request in part because approval did not conform to the master plan, which had the objective of preserving agricultural land within the township. Additionally, as in *Bell River Associates*, the request was denied because the property lacked public utilities and was too dense of a development for the area. Because the township board could consider the agricultural character of the surrounding area, the township master plan, and the lack of urban facilities, we conclude that plaintiffs have not established that the township board lacked a reasonable governmental interest in denying the request. Accordingly, we find no merit to plaintiffs' argument that the trial court erred when it concluded that defendant did not deprive plaintiffs of their substantive due process rights under the Michigan Constitution.

Affirmed in part, reversed in part, and remanded for further factual findings consistent with this opinion. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell